



EUROPEAN COMMISSION

STATEMENT

Brussels, 7 July 2014

Statement by President Barroso as a witness in the case brought to the General Court by Mr John Dalli

Mr President, Members of the General Court

First of all let me thank you for inviting me to give evidence as a witness about the meeting in my office on 16 October 2012 and to assist you in doing justice.

I will give you the facts as they happened. Here at the very beginning I want to say: yes, Mr Dalli resigned of his own will in my office on 16th October 2012 in an unambiguous manner. Very serious accusations had been made against Mr Dalli, accusations of improper contacts with the tobacco lobby and knowledge of attempted bribery. It was important for me to protect the Commission as an Institution, in particular because Mr Dalli was the person responsible for the Tobacco Products Directive that was being prepared as part of the 2012 Commission Work Programme.

Let me start by saying that the 16 October 2012 meeting was not the first one I had with Mr Dalli on the allegations against him. The first one was on 25 July 2012. I was informed when OLAF launched its independent investigation but I was explicitly asked not to speak about it to anyone, including Mr Dalli. After this limitation was lifted in July 2012 I asked to see him. This was just before the summer break and I wanted to be sure that if anything became public during the summer that the Commission would be able to respond and explain. I made clear to him how important it would be for the investigation to establish the facts and how important the outcome of the investigation would be for his position as Commissioner. He told me he had done nothing improper and that he was going to take action against those involved. After that meeting he sent me a letter on 27 July confirming that he intended *"to take legal advice on the actions I can take against all those involved"*. He never came back to me on these issues.

Then we come to our meeting on 16 October. I read to him – more than once – the summary of the conclusions of the OLAF report which the Director General of OLAF sent to me by letter on 15 October 2012. These conclusions were, and I quote:

"Commissioner Dalli interacted on several occasions with representatives of the tobacco industry in unofficial and confidential meetings, which were conducted without the knowledge and involvement of the competent services. These meetings were all organised by Mr Silvio Zammit, who is a Maltese entrepreneur from outside the Institutions, and a close friend of Commissioner Dalli."

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The OLAF report continues:

"Mr Zammit was also informed on certain matters related to the Commissioner's portfolio and this knowledge increased his credibility in the eyes of the stakeholders.

In short, he was considered by the tobacco representatives as the intermediary for getting in touch with the Commissioner and as a person speaking on Commissioner Dalli's behalf.

This is the relationship framework that allowed Mr Zammit, for a period of several months, firstly to pave the way for and then to repeatedly request representatives of the tobacco traders to pay bribes in exchange for the adoption of a proposal for lifting the ban on snus, which would be a measure falling within the competence of the European Institutions. This was done by referring to Commissioner Dalli by name."

I will continue to quote because the position in which the OLAF report put Mr Dalli was an essential part of my meeting with him.

"Although there is no conclusive evidence of the direct participation of Commissioner John Dalli either as the instigator or the mastermind of the operation of requesting money, there are a number of unambiguous and converging circumstantial pieces of evidence gathered in the course of the investigation, indicating that he was indeed aware of the machinations of Mr Silvio Zammit, and of the fact that he was using his name and position to gain financial advantages."

The OLAF letter concludes, and again I quote, that

"Commissioner Dalli's behaviour could thus be seen as a serious breach of his duty to behave in keeping with the dignity and the duties of his office. Therefore I refer the results of this investigation to you for possible actions in light of the provisions laid down by the "Code of Conduct for the Commissioners", C (2011) 2094. Please be informed that OLAF Final Report and Recommendations concerning this investigation are also being sent to the Maltese Attorney General".

I have quoted in extenso because this was the document I had to confront Mr Dalli with so that I could decide how to react. Having read it to him, I asked him what he had to say about it. While protesting his innocence emphatically, he did not deny having met with representatives of the tobacco industry through Mr Zammit. In fact he acknowledged that it was imprudent for a Commissioner to have such contacts. He did not give a convincing explanation for these strange contacts. I could not understand how someone with responsibility for preparing legislation on tobacco products could have meetings with people from the tobacco lobby, outside the Commission - many thousands of kilometres outside - without any officials being present, meetings that were kept secret from the Institution and using a bar and restaurant owner to establish contacts. This was bizarre – to say the least. In any case it was not in keeping with the proper conduct of a Commissioner.

At that point it became definitely clear to me that politically it would be impossible for him to continue as a Commissioner. Before the meeting I still had hoped that he would be able to explain and to provide me with sufficient elements for me to justify before the European Parliament and the other Institutions why a Commissioner who was the subject of such findings after an independent investigation should continue in office. Let me make it clear that for me – I am a lawyer by training - the presumption of innocence is sacred. I have always respected this principle and I always gave Mr Dalli the benefit of the doubt. The legal presumption of innocence must always apply. But here we are speaking about political conditions. The political conditions allowing Mr Dalli to stay in office were another matter. It was clearly no longer tenable for him to continue.

I told Mr Dalli it would be better for him to resign on his own initiative, to clear his name. If he did not follow that path, I told him that as President of the Commission, I would have

to ask him to resign in keeping with Article 17 (6) of the Treaty. We had a long discussion on the pros and cons and I gave him a very clear choice between two alternatives. I asked him what he intended to do and he decided that it was better for him to resign on his own initiative.

Our conversation lasted around one hour and a half. At several occasions Mr Dalli was asking for more time. One week. One day. And I could not give it because there could have been leaks and that would create irreparable damage to the Institution. It was clear for both of us – as politicians – that there was a big difference between voluntary and forced resignation. It is not at all the same if someone resigns of his own will or if he is asked to do so. It happens in national governments too that Ministers resign when they are accused, rightly or wrongly. They do so to clear their names, to underline their innocence and to avoid damaging the bodies that they serve. Mr Dalli had been a Minister. He is a very, very experienced politician. He told me he already had a similar situation in Malta that indeed led to his resignation. This was not an administrative matter, not a question of labour law. He was not an official of the Commission. This was not about a disciplinary procedure regarding a normal employee but about confidence in the holder of a very important political office. The Commission and the Commissioners are politically accountable to the European Parliament. He told me clearly that he resigned on his own initiative. At several points during our long conversation he asked to have access to the full report of OLAF. I told him I could not give it to him because it would have been illegal since it was going to be sent by OLAF to the Maltese Attorney General. In fact, there is a Regulation that provides that it is illegal to make the report public before certain conditions are met. He also came back to say how difficult all of this was. And precisely because of this, because of these circular arguments, I found it necessary to clarify more than once with him that he had resigned voluntarily. He confirmed that he had. There was absolutely no ambiguity about that.

With Mr Dalli's agreement, I then asked the Director General of the Commission Legal Service and the Head of my Cabinet to come to my office to take note of our conclusions and to clarify any follow up matters (such as the press statement and what would happen to his staff, etc). During that second meeting he again confirmed that he had resigned on his own initiative. In front of the two officials I read to him the press statement that the Commission would issue at five o'clock. The press statement included the following statements:

"Commissioner John Dalli has today announced his resignation as a member of the Commission with immediate effect".

And "Mr Dalli decided to resign in order to be able to defend his reputation and that of the Commission".

Mr Dalli did not object to the contents of the press statement when I read it in front of two senior officials of the Commission.

Our meeting was in general civilised, but of course it was also tense at times. The situation was not easy for him. But neither was it easy for me. As a political leader, as a former Prime Minister and as President of the Commission I have always treated people with respect. I have stood by my teams – but I have also taken my responsibility to the institution I serve with the utmost seriousness. In 10 years as President of the Commission – the first mandate with 27 Commissioners; the second with 28 Commissioners – I never experienced a similar situation: serious allegations against the integrity of a Commissioner directly related to the exercise of his duties. And I never experienced a similar loss of confidence! In fact, I lost completely my personal and political confidence in Mr Dalli and he could not give convincing explanations. Just to imagine that a Commissioner who had been the subject of an independent investigation and who was preparing legislation on tobacco products had such strange contacts with the

industry meant it was unthinkable for him to continue in the Commission. During our conversation Mr Dalli had agreed with me that he had been imprudent. Not only was it untenable that he remain a Commissioner, it was also a matter of common sense that a prolonged investigation would cast shadows of doubt over his integrity and that of the Commission as a whole. In our discussion we talked about how he would need time and the right conditions to defend himself and how it would be impossible to do this at the same time as preparing and negotiating such a substantial piece of legislation.

After my meeting with Mr Dalli I spoke by phone to the Maltese Prime Minister Mr Gonzi. This was the first time I had ever spoken to Mr Gonzi about the case – or indeed to anyone outside of my immediate collaborators. He understood the situation and we agreed to launch the process for replacing Mr Dalli as Commissioner. The same evening as our phone call Mr Gonzi informed the Maltese Parliament, and I now read from the public record of the Maltese Parliament, that Mr Dalli told him by phone that, I quote:

"....he had decided to resign from the post of Commissioner in order to better defend himself and the institution of which he had formed part until then".

Here we have Mr Dalli confirming to the Prime Minister of Malta that he resigned voluntarily. This is on the record.

There should be no room for doubt about any of this. The truth is that he resigned voluntarily – as he confirmed to the Prime Minister of Malta, the person who had nominated him. I was not obliged to use the power of article 17 (6) to ask him to resign. He resigned of his own will. By the way, in all of his statements Mr Dalli has said I wanted him to resign. It is true. The only logical conclusion to draw from this is that if I did not make such a request it was precisely because he had resigned of his own initiative. If he had not, I would certainly have made him resign in line with article 17 (6).

Almost a week after our meeting, on 22 October 2012, I received a letter from him in which he stated that he had said verbally that he would resign but in that letter he questioned the effectiveness of his resignation since it had not been done in writing. I replied immediately on 23 October stating that the question did not arise. I stated that, and I quote:

"Under the Treaty, no written form is required for a declaration of resignation, and it is irrevocable. As a consequence, no further question arises about the effectiveness of your resignation".

In the subsequent replacement process, neither the Council of the European Union nor the European Parliament objected. Both the European Parliament and the Council confirmed the nomination of Mr Borg replacing Mr Dalli. Nor did Mr Dalli take any legal action to try to stop the process.

I would like to conclude with some wider political considerations that in fact were present in my mind when dealing with the resignation. This situation did not take place in an institutional vacuum. There is a history in the European Commission. In 1999 the Commission led by President Santer had to resign as a body because one single Commissioner, who was the subject of less serious allegations, had refused to resign. This was a major blow to the reputation of the institution. It happened only five years before I took office. It explains why, like my predecessor Mr Prodi, I have always considered that respecting the highest ethical standards was of fundamental importance for the functioning of the Commission. I have indeed been very vigilant. I consider that the Commission and its members must be of undisputed reputation. If the integrity of a member of the Commission is called into question, the integrity of the whole institution risks being damaged.

It is the job of the President to protect the institution. Let's now imagine just for a moment what would have happened if Mr Dalli had remained in office. Think about the consequences of presenting the tobacco legislation under such circumstances. Not only he, but the Commission as a whole would be under suspicion. The European Parliament could have voted a motion of censure with devastating institutional consequences for the Commission at a time when it needed to be able to devote itself to responding to the economic and financial crisis. One thing is sure: if Mr Dalli had stayed in office it would not have been possible to adopt the Tobacco Directive in this mandate with all these suspicions hanging over it. In contrast, even though his replacement required a few weeks, the Commission proposal was finally presented and adopted by the Council and the European Parliament. And this within the timeframe that was anticipated. It was clear to me that if Mr Dalli had not himself decided to resign voluntarily I would, and as I have already said, have had no alternative but to ask him to do so. Mr Dalli took the right decision for himself and I did not need to resort to article 17 of the Treaty because he chose to resign on his own initiative.

All of my statements about this issue have been consistent, and I have always respected the presumption of innocence. In the Commission's press statement of 16 October 2012 it is clearly stated that *"Mr Dalli categorically rejects these findings"* – it was myself that added this by hand in front of Mr Dalli – and in several interventions before the European Parliament (including to the Conference of Presidents and also in a letter to the President of the European Parliament) I also made clear that the legal presumption of innocence applied.

One thing is the legal presumption of innocence, another is about the political conditions.

But when faced with the conclusions of the OLAF report it was clearly politically untenable for Mr Dalli to remain as a Commissioner. The honourable solution was for him to resign, which he did of his own will as he confirmed to me. Why did he change his mind? Why did he start to say he did not resign? Of course I cannot be sure, but since then he has been developing conspiracy theories including in the media. I wish to state categorically that as far as the Commission is concerned these allegations are completely baseless. I have made my statement today solely in line with what you asked of me. You have asked me to explain what happened in the meeting on 16th October 2012 and the context. If other aspects of this case are raised I reserve the right to defend the reputation of the Institution, I have the honour to preside from such defamatory accusations.

I am of course happy to answer any further questions you may have.

John Dalli
Member of the European Commission

Brussels, 28. 06. 2012

Dear Mr Stoiber,

Thank you for your letter of 10 May 2012 concerning the forthcoming revision of the Tobacco Products Directive.

As explained during the discussion at the High Level group in May, the Tobacco Products Directive dates from 2001 and needs to be revised to bring it in line with market, scientific and international developments. Smoking is the biggest avoidable cause of death in the European Union, responsible for close to 700.000 premature deaths per year. More than 70% of smokers start when they are under age and once they are addicted, smoking cessation becomes a real challenge. This is why it is important to discourage young people from starting to smoke.

I have taken note of your concerns about the possible impact that some of the possible policy options under consideration, such as prohibition of display at points of sale, plain packaging, or prohibition of the use of ingredients increasing attractiveness of tobacco products might have.

As regards plain packaging, the Council Recommendation on smoke-free environments of November 2009 invites the Commission to "analyse the legal issues and the evidence base for the impact of plain packaging". Together with the prohibition of display at the point of sale, plain packaging has also been raised in the framework of the WHO Convention on Tobacco Control. The guidelines on packaging and labelling and on advertising of the Framework Convention, adopted in November 2008, recommend that Parties consider adopting plain packaging and introducing a ban on display of tobacco products at the point of sale.

The role of additives in tobacco products, in particular in enhancing smoking initiation and subsequent addiction, has been thoroughly analysed all over the world. In particular, the link between smoking by young people and flavourings has been shown by market data and in several scientific studies. The Scientific Committee on Emerging and Newly Identified Health Risks adopted an opinion on the attractiveness and addictiveness of tobacco additives on 12 November 2010, confirming that numerous additives are being used to increase the appeal of tobacco products.

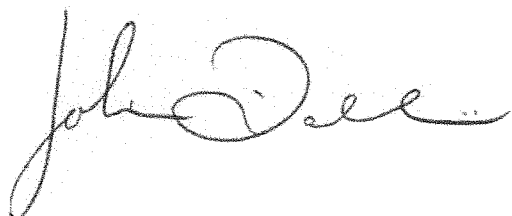
Dr Edmund Stoiber,
Chairman of the High Level Group
of Independent Stakeholders on Administrative Burdens

As regards Smokeless Tobacco Products, these are already covered by harmonised rules set out in the current Directive. In 1992, the reason for exempting chewing and nasal tobacco from a ban was that they were seen as traditional products with virtually no market outside certain socio-professional groups and regions.¹ However, recent years have seen a diversification and multiplication of such types of tobacco products, which are likely to attract those who wish to consume tobacco in places where smoking is forbidden, and an increase in their volume of sales. In this context, the Commission is currently considering all possible ways to effectively regulate Smokeless Tobacco Products, taking into account their growth potential to circumvent smoke free environments, market development and the current differential treatment between oral tobacco and other smokeless products.

Let me underline that my services are currently assessing the economic, social and health impact of all policy options identified within the review of the Tobacco Products Directive. The particular situation of micro-enterprises and SMEs is being taken into account when assessing the proposed options. Exemptions or sufficiently long transitional periods are considered whenever SMEs would be primarily affected by the proposed measures. I personally met with tobacco growers and manufacturers to listen to their concerns and my services have held extensive consultations.

Finally, I would like to reiterate that the European Commission plans to put forward a proposal to revise the Directive before the end of the year and that no decisions have been taken at this stage on the way forward on the various issues highlighted in your letter.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'John Deere', is centered below the text 'Yours sincerely,'.

¹ OJ C 150 E. 30.5.2006. p 43-51. COM (1999) 594 final. 16.11.1999. Proposal for a Directive of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States concerning the labelling of tobacco products. See explanatory memorandum.